

December 11, 2009

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 09-269

RECEIVED

JAN 28 2010

JOEL SCHNEIDER
U.S. Magistrate Judge

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

ANDRE JARRELLS

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

FRIDAY, DECEMBER 11, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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5 Transcript of proceedings in the above
6 matter taken by Theresa O. Mastroianni, Certified
7 Court Reporter, license number 30X100085700, and
8 Notary Public of the State of New Jersey at the
9 United States District Court House, One Gerry Plaza,
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2 A P P E A R A N C E S :

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LOUGHRY & LINDSAY, ESQUIRES

5

BY: JUSTIN T. LOUGHRY, ESQUIRE

- and -

6

BY: LAWRENCE D. LINDSAY

330 MARKET STREET

7

CAMDEN, NEW JERSEY 08102

856-968-9201

8

ATTORNEYS FOR THE PLAINTIFFS

9

10

ROSELLI, GRIEGEL, LOZIER & LAZZARO, PC

11

BY: MARK ROSELLI, ESQUIRE

- and -

12

BY: KENNETH W. LOZIER, ESQUIRE

1337 STATE HIGHWAY 33

13

HAMILTON SQUARE, NEW JERSEY 08690

609-586-2257

14

ATTORNEYS FOR THE DEFENDANTS

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1 JUDGE BISSELL: I'm now reopening
2 proceedings in the case of Andre Jarrells, civil
3 docket number 09-269.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Jarrells.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Andre Jarrells was also a resident of D
18 Tent and testified with regard to alleged assaults
19 against him while in that facility. His testimony
20 regarding the conduct directed against him can best
21 be described in three short excerpts from his
22 testimony before the Special Master on February 20th,
23 2009.

24 Beginning at the top line of page ten.

25 "Question: And when was the first time

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1 you knew something was wrong relative to Baker being
2 killed?

3 "Answer: When six officers came in
4 with masks and all this equipment and billy clubs,
5 told us to get naked, get on the floor. They just
6 started beating on us. And we didn't know what was
7 going on.

8 "Question: When you say they started
9 beating on us, what did they do?

10 "Answer: Kick us. Hit us with the --
11 I got punched in the face. And spitting on us.
12 Degrading us. We didn't know what we were doing.
13 What did we do wrong?

14 "Question: How many men were in D Tent
15 at this time?

16 "Answer: Let's see if I can be exact.
17 One, two, three -- I think it's ten, if I'm not
18 mistaken.

19 "Question: And was a Barry Sweeten in
20 that tent?

21 "Answer: Yes, he was. He slept right
22 there next to me.

23 "Question: How about Robin Lewis?

24 "Answer: He slept across from me.

25 "Question: Now, you've described them

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1 coming in, did they tell you to get on the ground or
2 get on the bed?

3 "Answer: Get on the ground.

4 "Question: Were you assaulted that
5 day?

6 "Answer: Yes.

7 "Question: How many different days can
8 you estimate you were assaulted by guards during the
9 lockdown?

10 "Answer: Everyday for the first two
11 weeks. At least everyday, once a day.

12 "Question: And how did that occur, can
13 you describe that?

14 "Answer: They just came in and started
15 beating on people. Get on the bed. Just kicking
16 people for no reason. We didn't get to take showers.
17 We ate cold food. Drunk sour milk. Just terrible.

18 "Question: Were you beaten by fists
19 and kicks?

20 "Answer: Yes, sir.

21 Another excerpt appears at page 13,
22 lines 12 through 17.

23 "Question: On the first day where you
24 say they came in, made you lay on the floor and beat
25 you, did they use clubs that day?

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1 "Answer: Yes. One used a club.
2 Mostly they was kicking me with their feet. And
3 we're talking about thunderous kick with those big
4 boots."

5 And then if I may add, he has a
6 description about the conduct administered to Inmate
7 Sweeten which was completely different than that
8 testified to by Inmate Sweeten himself who maintained
9 his claim in his case despite the lack of credibility
10 of the testimony of Mr. Jarrells.

11 Page 13, line 22 Mr. Jarrells states:

12 "Question: If you could, sir, I'd like
13 you to describe what you saw guards do to Inmate
14 Sweeten.

15 "Answer: Okay. I had a good view of
16 him because he was right in front of me. And they
17 was kicking him in the chest, in the head, all over
18 his body. His back, the ribs. And I just saw all
19 this. And I just put my head down and just prayed.
20 That's all I could do."

21 He continues.

22 "Question: Was this during a time when
23 they ordered you to lay face down?

24 "Answer: Yes.

25 "Question: The men that kicked

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1 Mr. Sweeten, were they SOGS?

2 "Answer: Some were SOGs, some were
3 correction officers. But you really couldn't tell
4 because they was in full riot gear. Fortunately,
5 some of the ones we knew before they put the riot
6 gear on, you could see through the glass the face to
7 see who it is.

8 "Question: So it was a combination of
9 SOG and regular corrections officers?

10 "Answer: Yes, sir."

11 Now, we know from ample testimony
12 throughout these proceedings that the Bayside Prison
13 Officers did not don riot gear to assist the SOGs in
14 inmate extractions. That would be particularly the
15 case here when you are involved in a tent with only
16 ten inmates, that testimony is just plain false.

17 Further at page 22, line 21 and further
18 on. This is, of course, cross-examination.

19 "Question: Beginning July 30, 1997,
20 you were beaten everyday by Bayside and/or SOG
21 officers; is that correct?

22 "Answer: Yes, sir.

23 "Question: And you claim that occurred
24 for about 30 days; is that correct?

25 "Answer: The whole thing lasted about

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1 30 days. I didn't get beat 30 days.

2 "Question: And during that 30 days you
3 claim that you were struck with night sticks at least
4 55 times; is that correct?

5 "Answer: That's right. Every time
6 they came in.

7 "Question: And you were kicked by
8 those officers at least one hundred times; is that
9 correct?

10 "Answer: Yes, sir. If you add it all
11 up, I try not to remember it, but --

12 "Question: I can imagine.

13 "Answer: Yes, sir."

14 There then follows in the course of
15 this plaintiff's testimony a long list of Bayside
16 Prison Officers who allegedly committed these
17 multiple assaults on virtually a daily basis
18 throughout the lockdown. Of course, because as I
19 find this is a fabrication, there is inconsistent
20 testimony by Mr. Jarrells between his testimony
21 before the Special Master and his deposition,
22 particularly with regard to the names of the officers
23 at Bayside whom he lists as persons who assaulted
24 him. Among the officers named, at least three
25 testified in this case whose comments are worth

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1 discussing.

2 Officer Roberts testified that during
3 the lockdown he was never assigned to the tents at
4 all. Secondly, that Bayside Prison Officers did not
5 don riot gear and did not employ night sticks in the
6 course of their duties during the lockdown or
7 generally. Officer Pfirman testified also that
8 although named by Mr. Jarrells as one of the persons
9 who assaulted him, he was never assigned to the tents
10 during the lockdown either.

11 Officer Fisher was assigned to the tent
12 area, but he was the quarter master for the tents
13 involved in the distribution of supplies and the like
14 as he described it. Hence, he would not have drawn
15 an assignment for the evacuation of inmates from any
16 one or more of the tents and never assaulted a
17 prisoner, as he so testified. On the other hand,
18 because of his position as the quarter master, he is
19 a person whom inmates housed in the tents would have
20 known.

21 If the inherent incredibility of Mr.
22 Jarrells' testimony and the refutation by some of the
23 officers whom he named were not enough, the testimony
24 of Barry Sweeten contradicts it as well. Mr. Sweeten
25 testified before this Special Master on January 20th,

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1 2009, and some excerpts of his testimony warrant
2 reading here. One of them begins at page 70, line 12
3 of the transcript and continues to page 72, line 17.

4 I might add here parenthetically that
5 the testimony of Inmates Jarrells, Lewis and Sweeten
6 was all offered on behalf of those respective
7 plaintiffs for the case of each of them. Back to the
8 quotation.

9 "Question: So the only time that you
10 recall SOG officers coming to your tent was on what
11 you claim to be August 15th, 1997, correct?"
12 Parenthetically, the record is the 14th.

13 "Answer: Yes, sir.

14 "Question: The day in which the
15 inmates were transferred to the gymnasium?

16 "Answer: Yes, sir.

17 "Question: And at no other time during
18 the lockdown did any SOG officers come into your
19 tent?

20 "Answer: That's correct.

21 "Question: And you had never seen any
22 inmates, therefore, you had never seen any other
23 inmates who were in D Tent be beaten on any other
24 occasion?

25 "Answer: Not after that day, no, sir.

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1 "Question: And prior to that
2 particular incident, right, that was the only time
3 that you have a recollection of SOG officers coming
4 into D Tent?

5 "Answer: That's correct.

6 "Question: And do you have any
7 recollection of housing officers -- the housing
8 officers coming into your tent at all?

9 "Answer: Well, on a regular basis they
10 would always come in. There was one guy named
11 Blackbeard, and Sergeant Cappe, there was another guy
12 that had blond hair, blond haired guy, really skinny
13 guy.

14 "Question: And they were the housing
15 officers that you would see occasionally?

16 "Answer: On duty, at each particular
17 night they all had their different shifts.

18 "Question: And those were the officers
19 that you would see when you had bathroom break?

20 "Answer: Yes.

21 "Question: Right, shower breaks?

22 "Answer: That's correct.

23 "Question: Other than your seeing
24 these housing officers being present during the
25 lockdown for their duties, do you have any

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1 recollection of any of those housing officers coming
2 into D Tent and assaulting any inmates during the
3 lockdown?

4 "Answer: Not in my presence, no.

5 "Question: And how about any Bayside
6 Officer, do you have any recollection of any Bayside
7 Officer that you could identify as a Bayside Officer
8 coming in your tent, D Tent, and assaulting any
9 inmates while you were there?

10 "Answer: No, sir.

11 "Question: So is it fair so say,
12 Mr. Sweeten, that the only assaults that you claim to
13 have seen was on that particular day?

14 "Answer: That's correct.

15 "Question: Of what you claim to be
16 August 15th, correct?

17 "Answer: Yes, sir.

18 "Question: Whether it be your own or
19 other inmates?

20 "Answer: Yes, sir."

21 Testimony also continues on the
22 following page, it's page 73, lines seven through 15.

23 "MR. ROSELLI: Just a follow-up to
24 that, your Honor, I'm sorry.

25 "Question: So then it's clear, then,

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1 you did not witness Bayside Officers or SOG officers
2 come into D Tent on any other occasion, assaulting
3 inmates in D Tent?

4 "Answer: Not after that date, no.

5 "Question: And/or before?

6 "Answer: That's correct."

7 In summary, Mr. Jarrells effort to
8 generate a claim for himself is based, I conclude,
9 upon the arrival of a SOG team in the tent on
10 August 14th, 1997. Upon his witnessing the assaults
11 that did, in fact, occur to Mr. Sweeten, and which
12 have served as a successful cause of action for him
13 in these matters, and then deciding to jump on this
14 band wagon. But he wasn't going to limit himself to
15 a single event on a single date. Rather, he
16 fabricated this totally incredible story about
17 beatings right there in this small confines of Tent D
18 day after day after day after day.

19 Mr. Sweeten, to his credit, whom I
20 found to be credible in his own case, refutes that in
21 his testimony under oath before me and I find the
22 latter to be much more credible.

23 Finally, although not every item of
24 evidence has been discussed in this opinion/report,
25 all evidence presented to the Special Master was

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1 reviewed and considered.

2 For the reasons set forth before, I
3 recommend in this report that the District Court
4 enter an order and judgment of no cause for action
5 with regard to Andre Jarrells.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: December 15, 2009

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